

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61583; File No. SR-Phlx-2010-23]

### Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Intermarket Linkage Rules

February 25, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on February 19, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate Exchange Rule 1088, *Phase Out of Intermarket Linkage Rules*.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to eliminate Exchange Rule 1088, a temporary rule titled *Phase Out of Intermarket Linkage Rules* because this rule is no longer necessary.

On June 17, 2008, the Exchange filed the Options Order Protection and Locked/Crossed Market Plan ("Plan"), joining all other approved options

markets in adopting the Plan.<sup>3</sup> The Plan requires each options exchange to adopt rules implementing various requirements specified in the Plan.<sup>4</sup> The Plan replaces the former Plan for the Purpose of Creating and Operating an Intermarket Linkage ("Linkage Plan").<sup>5</sup> The Linkage Plan required Participating Options Exchanges to operate a stand-alone system or "Linkage" for sending order-flow between exchanges to limit trade-throughs.<sup>6</sup> The Options Clearing Corporation ("OCC") operated the Linkage system (the "System").<sup>7</sup> The Exchange adopted various new rules in connection with the Plan to avoid trade-throughs and locked markets, among other things.<sup>8</sup> The Exchange currently offers private routing directly to away markets.<sup>9</sup>

The Exchange adopted Exchange Temporary Rule 1088 in order to facilitate the participation of certain Participating Options Exchanges who may require the use of P/A Orders and Principal Orders after implementation of the Plan.<sup>10</sup> Certain Participating Options Exchanges required a temporary transition period during which they continued to utilize these

order types that existed under the Linkage Plan. The Exchange proposed substantially similar rules with that of the other Participating Options Exchanges to accommodate the possibility of continued use of P/A Orders and Principal Orders. At this time all Participating Options Exchanges have discontinued use of the Linkage Plan. The Exchange proposes at this time to delete Temporary Rule 1088 because it is no longer necessary in light of the discontinued use of the Linkage Plan.

###### 2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act<sup>11</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>12</sup> in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by proposing the elimination of Temporary Rule 1088, which reflects usage of a former Linkage Plan that has since been replaced by a new Plan.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section

<sup>3</sup> See Securities Exchange Act Release Nos. 60405 (July 20, 2009) (National Market System Plan Relating to Options Order Protection and Locked/Crossed Markets). The Plan is a national market system plan proposed by the seven existing options exchanges and approved by the Commission. See Securities Exchange Act Release No. 59647 (March 30, 2009), 74 FR 15010 (April 2, 2009) (File No. 4-546) ("Plan Notice") and 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009) (File No. 4-546) ("Plan Approval"). The seven options exchanges are: Chicago Board Options Exchange, Incorporated ("CBOE"); International Securities Exchange LLC ("ISE"); NASDAQ OMX BX, Inc. ("BOX"); The NASDAQ Stock Market LLC ("Nasdaq"); NYSE Amex LLC ("NYSE Amex"); NYSE Arca, Inc. ("NYSE Arca"); and Phlx (each exchange individually a "Participant" and, together, the "Participating Options Exchanges").

<sup>4</sup> See Securities Exchange Act Release No. 60363 (July 22, 2009), 74 FR 37270 (July 28, 2009) (SR-Phlx-2009-61). Linkage was governed by the Options Linkage Authority under the conditions set forth under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage approved by the Commission. The registered U.S. options markets are linked together on a real-time basis through a network capable of transporting orders and messages to and from each market.

<sup>5</sup> See Securities Exchange Act Release No. 60363 (July 22, 2009), 74 FR 37270 (July 28, 2009) (SR-Phlx-2009-61). Linkage was governed by the Options Linkage Authority under the conditions set forth under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage approved by the Commission. The registered U.S. options markets are linked together on a real-time basis through a network capable of transporting orders and messages to and from each market.

<sup>6</sup> See footnote 5.

<sup>7</sup> See footnote 5.

<sup>8</sup> See footnote 3.

<sup>9</sup> See Exchange Rule 1080(m).

<sup>10</sup> See Securities and Exchange Act Release No. 60550 (August 20, 2009), 74 FR 44430 (August 28, 2009) (SR-Phlx-2009-61).

<sup>11</sup> 15 U.S.C. 78f(b).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>1</sup> 15 U.S.C.78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

19(b)(3)(A) of the Act<sup>13</sup> and Rule 19b-4(f)(6) thereunder.<sup>14</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2010-23 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Phlx-2010-23. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business

days between the hours of 10 a.m. and 3 p.m.<sup>15</sup> Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2010-23 and should be submitted on or before March 25, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61573; File No. SR-NASDAQ-2010-022]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ Stock Market, LLC. Inc. Relating To Amending NASDAQ Options Market ("NOM") Chapter V, Section 6, Obvious Errors

February 23, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup>, and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on February 18, 2010, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II, below, which Items have been prepared by the NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to amend NASDAQ Options Market ("NOM") Rule Chapter V, Section 6, Obvious Errors, to adopt the ability to review transactions on NASDAQ's own motion.

The text of the proposed rule change is available on the Exchange's Web site at <http://www.nasdaq.cchwallstreet.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to amend NOM Chapter V, Section 6 pertaining to the nullification and adjustment of options transactions. Specifically, NASDAQ proposes to adopt a provision which provides that in the interest of maintaining a fair and orderly market and for the protection of investors, the Chief Regulatory Officer of NASDAQ or his/her designee who is an officer (collectively "NASDAQ officer"), may, on his or her own motion or upon request, determine to review any transaction occurring on NASDAQ that is believed to be erroneous.<sup>3</sup> A transaction reviewed pursuant to this provision may be nullified or adjusted only if it is determined by the NASDAQ officer that the transaction is an obvious error as provided in Chapter V, Section 6. A transaction would be adjusted or nullified in accordance with the provision under which it is deemed an erroneous transaction. The NASDAQ officer may be assisted by a designated employee in NASDAQ Regulation that is trained in the application of this rule for reviewing a transaction(s).

The NASDAQ officer shall act pursuant to this paragraph as soon as possible after receiving notification of the transaction, and ordinarily would be expected to act on the same day as the transaction occurred. However, because a transaction under review may have occurred near the close of trading or due

<sup>3</sup> In the event a party to a transaction requests that NASDAQ review a transaction, the NASDAQ officer nonetheless would need to determine, on his or her own motion, whether to review the transaction.

<sup>13</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>14</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

<sup>15</sup> The text of the proposed rule change is available on Phlx's Web site at <http://www.nasdaqtrader.com>, on the Commission's Web site at <http://www.sec.gov>, and at the Commission's Public Reference Room.

<sup>16</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.